

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**Kingsberry's (Colin) Application [2014] NIQB 45**

**IN THE MATTER OF AN APPLICATION BY COLIN KINGSBERRY FOR  
JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF A DECISION BY THE NORTHERN IRELAND PRISON  
SERVICE ON BEHALF OF THE SECRETARY OF STATE FOR  
NORTHERN IRELAND**

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**TREACY J**

**Introduction**

[1] The applicant is a sentenced prisoner at HMP Maghaberry who applied to be moved to the Loyalist Separated Wing at Bush House. This application was refused on the basis that he did not satisfy all the relevant criteria in particular criteria (d) which requires that "he is a member or supporter of a proscribed organisation connected with the affairs of Northern Ireland".

[2] In correspondence dated 23 July and 13 August 2013 the Prison Service indicated that in determining whether a prisoner satisfies this criterion reliance is placed upon a confidential report from the PSNI.

[3] The applicant's complaint is predicated on the assertion that the Prison Service rely solely upon this report to the exclusion of any extrinsic facts that may also bear upon the issue. The applicant contends that this asserted "policy" for processing applications is unfair and productive of unreasonable decisions that do not take into account all relevant factors.

[4] The applicant considers that the initial decision in his case provided to him on 27 June 2013 was processed in the manner described above and was unfair and unreasonable. When the applicant asked for that decision to be reconsidered taking

into account extrinsic facts the applicant considers that the further decision of the Prison Service dated 13 August 2013 refusing to reconsider the earlier unfair/unreasonable decision was furthermore unfair and unreasonable.

### **Order 53 Statement**

[5] The applicant sought the following relief:

“(a) A declaration that the policy of the Prison Service whereby in determining applications for transfer to Separated Loyalist Conditions it judges satisfaction of the criterion of whether an applicant is a member or support of a proscribed organisation *solely* by reference to a confidential PSNI report is unreasonable, unlawful and void.

(b) A declaration that the policy of the Prison Service whereby in determining applications for transfer to Separated Loyalist Conditions it judges satisfaction of the criterion of whether an applicant is a member or supporter of a proscribed organisation *solely* by reference to a confidential PSNI report and leaves out of account any other relevant extrinsic facts is unreasonable, unlawful and void.

(c) A declaration that the Prison Service’s decision refusing the applicant a transfer to Separated Loyalist Conditions communicated to the applicant on 27 June 2013 is unreasonable, unlawful and void.

(d) An order of certiorari removing into this Honourable Court and quashing the decision of the Prison Service taken on 27 June 2013.

(e) A declaration that the Prison Service’s decision of 13 August 2013 refusing to reconsider the applicant’s transfer to Separated Loyalist Conditions is unreasonable, unlawful and void.

(f) An order of certiorari removing into this Honourable Court and quashing the decision of the Prison Service taken on 13 August 2013.

...”

[6] The grounds upon which relief was sought are set out below. The applicant abandoned Ground 3(a)(i)-(vi). Ground 3(b)(i)-(iv) was pursued and is in the following terms:

“3.(b) The decision of 27 June 2013 and 13 August 2013 refusing the applicant’s application for transfer and refusing to reconsider same were unfair and unreasonable in that:

(i) The decisions were taken on foot of the impugned policy ... and were made following an unfair procedure.

(ii) As a result of the unfair procedure described above the decision-maker failed to conduct any or any proper enquiry into whether the criterion was satisfied and left out of account relevant or potentially relevant materials that should have been taken into account.

(iii) As a result of the procedure described above the decision-maker failed to take into account material relevant to the question which it could have obtained from members of the general population within the prison or from its own intelligence sources or from prisoners in Bush House who would know or know of the applicant and would have relevant information on whether he is a supporter or perceived to be a supporter of a Loyalist proscribed organisation.

(iv) As a result of the procedure described above the decision-maker failed to take into account relevant extrinsic facts relied upon by the applicant including the fact that he was a UVF standard bearer in a marching band, that he was the subject of a sectarian attack within the prison in 2011, that he had been convicted of a sectarian attack on a Catholic youth and that he had attended memorials, concerts and other shows of support for a Loyalist proscribed organisation.”

## **Background**

[7] In a letter dated 4 December 2013 the proposed respondent helpfully set out the background to the case.

[8] Schedule 4 of the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (“the 2010 Order”) provides for amendments to the Prison Act (Northern Ireland) 1953. Section 1A(2)(b) provides for the Secretary of

State to continue to exercise the functions relating, *inter alia*, to the accommodation of prisoners in separated conditions. Section 1A(7) provides for the Secretary of State to give a direction setting out arrangements under which officers of the Department of Justice are to be treated as officers of the Secretary of State and subject to her direction and control accordingly. The most recent direction is dated 2 October 2013.

[9] The criteria for admission to the male separated landings in Bush House are as follows:

- “(a) he wishes to be admitted to separated conditions;
- (b) he is of male gender;
- (c) he has attained the age of 18 years;
- (d) *he is a member or supporter of a proscribed organisation connected with the affairs of Northern Ireland;*
- (e) admitting him to separated conditions would not be likely to prejudice his safety;
- (f) admitting him to separated conditions would not be likely to prejudice the safety of others;  
and
- (g) admitting him to separated conditions would not be likely to prejudice the maintenance of security or good order in prison.”  
[emphasis added]

[10] When determining applications for transfer into separated conditions authorised NIPS officials seek a report from the PSNI upon the prisoner. The purpose of the report is to obtain the advice from PSNI and other relevant agencies about the prisoner’s associations and affiliations based upon the information which they may hold about him. The report provides a mechanism by which the NIPS can obtain independent verification of the prisoner’s professed associations. However, contrary to the applicant’s central submission the report is *not* the only source of information received or considered by NIPS in relation to this aspect of the criteria. NIPS will frequently receive representations from the prisoner himself or from others on his behalf which can include family members, associates or political representatives. Where such representations are received they are all taken into account by NIPS along with the contents of the PSNI report.

[11] The content of an independent report from PSNI, based upon information held by state agencies, will normally attract substantial if not decisive weight, however it is not the sole source of evidence which is considered in relation to this criteria. There is a clear need for independent assessment of the prisoner's professed associations so that the right to be housed in separated accommodation cannot be manipulated by either the prisoner himself or other persons acting on his behalf.

[12] The practice of obtaining a PSNI report is in accordance with the advice of the Prisoner Ombudsman who recommended that evidence of a prisoner's paramilitary affiliation should be received or verified by PSNI or other intelligence agencies. In the event that a prisoner believes that criteria have not been correctly applied the Ombudsman will accept a complaint and carry out an independent investigation. The Ombudsman will have access to all relevant material including the confidential police report.

[13] The information and representations provided by the applicant to support his application were taken into account both by staff within Maghaberry in reaching its initial decision and Prison Service Headquarters in determining his appeal. A report was obtained from PSNI and the Security Service to assist the decision maker which did not support the applicant's professed support for the UVF.

#### **Affidavit of Colin McCready**

[14] Governor Colin McCready, Head of Security Information Branch within NIPS, swore an affidavit on 20 March 2014 explaining the manner in which the Prison Service considered the representations made by and on behalf of the applicant in support of his request for transfer into separated conditions.

[15] Governor McCready determined the applicant's appeal and decided to refuse the application on the ground that the applicant was not a member or supporter of a proscribed organisation connected with the affairs of Northern Ireland. He relied on a report obtained from the PSNI about the applicant which revealed that there was no known trace of the applicant's membership or affiliation with a proscribed organisation.

[16] Governor McCready averred that his decision also took into account the further representations contained in the letter from the applicant's solicitor dated 30 July 2013. These representations included the applicant's membership of the Steeple Defenders Flute Band between 2008 and 2011, the fact that he had been convicted of a serious sectarian attack, that he had attended various events connected with the UVF and that the applicant had been the subject of sectarian attack while on remand within the prison.

[17] Governor McCready confirmed the criterion for transfer as set out in the letter from the Crown Solicitor's Office dated 4 December 2013, referred to above. He averred that the Prison Service will consider all information available to it however it

is important to receive independent verification of the affiliations asserted by the prisoner. He averred that Prison Service is careful not to enable prisoners to bring about a change in their accommodation arrangements by their own conduct as some prisoners may attempt to manipulate circumstances in order to procure a transfer to accommodation which they consider to be more favourable. He also averred that it is not unknown for prisoners to claim membership or support for an organisation based upon affiliations created while within the prison itself and it is for these reasons that the Prison Service will always obtain an independent report upon the prisoner and afford it substantial weight in determining an application for transfer. Governor McCready confirmed that this was how he determined the application in the present case.

### **Discussion**

[18] As explained earlier the applicant's complaint is predicated on the basis of the existence of a policy that the Prison Service rely solely on the confidential police report in determining whether criterion (d) is satisfied to the exclusion of other material that may be relevant to this issue. This assertion is just that – an assertion. I do not accept that the material before the court supports, even arguably, the existence of such a policy. On 30 July 2013 the applicant's solicitors furnished information as evidence that the applicant was a supporter of the UVF. For example he relied on the fact that his conviction for attempted murder of a Catholic was motivated by sectarianism and was widely reported as a sectarian hate crime. By reply dated 13<sup>th</sup> August the Prison Service stated, inter alia, that "based on *all* relevant factors and information to hand, your client does not meet all of the required criteria for separation". The letter of 4 December and the affidavit of Governor McCready put the matter beyond any doubt.

[19] It is obvious that the report from the PSNI on the issue will normally attract substantial weight. Of course the Prison Service are required to consider all relevant information on the issue which I am satisfied they did. But it is important that the Prison Service receive independent verification of affiliations asserted by the prisoner not least because there are a number of reasons why prisoners may seek to manipulate circumstances to procure a transfer to a regime they may consider to be more favourable. Having regard to the context I see no unfairness in the procedures that were adopted. In the event that the prisoner believes that the criteria have not been correctly applied the prisoner can complain to the Ombudsman. The Ombudsman is then required to conduct an independent investigation and will have access to all relevant material including the PSNI report.

### **Conclusion**

[20] The applicant has not established any arguable grounds. Accordingly, leave is refused and the application is dismissed.